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IN THE

Supreme Court of the United States

ELK GROVE UNIFIED SCHOOL DISTRICT
and DAVID W. GORDON, Superintendent,

Petitioners,

v.

MICHAEL NEWDOW,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE THE INSTITUTE IN BASIC LIFE PRINCIPLES, FAITH AND ACTION AND INTERNATIONAL REAPERS FOUNDATION INC. IN SUPPORT OF PETITIONERS

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I.

INTEREST OF AMICI CURIAE IN THIS CASE[1]

Institute in Basic Life Principles, Faith and Action, and International Reapers Foundation Inc. are nonprofit organizations representing thousands of constituents across the United States and Canada and, in fact, internationally. They appeal to this court to recognize this subtle and insidious attack under the guise of religious freedom upon the very citadel of American freedom, the *PHILOSOPHY OF GOVERNMENT* of the United States. The success of the respondent would result in a death blow to the moral stability of this nation and would have a tragic ripple effect around the world. We urge this court to reverse the Ninth Circuit Court of Appeals based on the issues raised in this brief.

II.

PROEM

The architect of the first international criminal trial, Associate Justice of the United States Supreme Court, Robert H. Jackson (1892-1954), was appointed by President Truman as America's chief prosecutor of the surviving Nazi leaders at Nuremberg (1945-1946). Long before he came to national and international fame he was a great success in his law practice in the small town of Jamestown, New York. His friend on the Supreme Court bench Justice Frankfurter often joked about his dispensing "Jamestown justice."[2]

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1. None of the parties have participated in the preparation or financing of this brief. Consents have been obtained from all of the parties for the filing of this Amicus brief and are being lodged herewith.

2. Comments credited to an article by John Q. Barrett on Justice Jackson in the Supreme Court historical Society quarterly.

Rare words are like fine wines and Justice Jackson was eloquent in their use. His closing remarks at Nuremberg constituted a monition of dire consequences when he stated:[3]

> If we cannot eliminate the causes and prevent the repetition of these barbaric events, it is not an irresponsible prophecy to say that this 20th century may yet succeed in bringing the doom of civilization.

The case before this bench is equally grave. It concerns an attack on the philosophy of government of this nation, which is its very foundation. Embarking on this voyage, we must set a course that steers clear of the rocky and perilous shore of "religion." **The issue before this court does not turn on the customary first amendment rhetoric, but requires a recognition of the foundational principles which dictate the very nature of the government of the United States.**

This case illustrates the "root cause" which is eating away at the heart of our Constitution and continues to foment litigation. By isolating that "root cause," this Court can reestablish appropriate constitutional jurisdiction, provide a current solution to these issues, and chart a course for future generations.

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3. The Avalon Project at Yale Law School: Nuremberg trial proceedings Volume 2, second day: http:///www.in Yale.edu/mall web/Avalon/imt/proc/11-21-45.htm.

III.

FOUNDING DOCUMENTS OF ORIGIN WHICH ARTICULATE THE UNITED STATES PHILOSOPHY OF GOVERNMENT

The Declaration of Independence is the United States "charter of incorporation," the heart of the organic law of this nation. The title of "United States of America" was officially claimed in the Declaration. In that document we expressed our dependence upon God as a new nation. Article VII of the Constitution incorporates the Declaration therein stating:

> . . . Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred eighty-seven and of the Independence of the United States of America the Twelfth. . . .

The 13 original states and every state admitted to the Union since then has been required to acknowledge the Declaration as the organic law of the land. As late as August 21, 1959, when the State of Hawaii was admitted to the United States, Pub. L. No. 86-3, 73 Stat. 4 (1959) found the Constitution of Hawaii to be ". . . republican in form and in conformity with the Constitution of United States and the principles of the Declaration of Independence . . ."

The Constitution which incorporated the principles of the Declaration was adopted September 17, 1787. The first ten amendments were ratified December 15, 1791.

IV.

UNITED STATES PHILOSOPHY OF GOVERNMENT AND ITS DISTINCTION FROM RELIGION

There is a fundamental difference between this nation's legal philosophy of government and religion. Philosophy of government involves principles, presuppositional truths, and perspectives on the nature and purpose of government.[4] It includes a view on the source of rights, the purpose of and restraints on government, the source of power of government, and the source of a standard of morality to be incorporated into its legal system.

Religion, on the other hand, is defined as the manner of discharging our duty to our Creator,[5] and is to be specifically distinguished from a philosophy of government.[6] Failure to make that distinction leads one down many dissonant trails. The following quotation is in accord with the principle of performing one's duty to the Creator, as opposed to recognition

4. "[Philosophy] when applied to any particular department of knowledge denotes the collection of general laws or principles under which all the subordinate phenomena or facts relating to that subject are comprehended." *American Dictionary of the English Language.* (Noah Webster, 1828).

5. Madison quoting from the Virginia Constitution, Article I § 16 (1776 and current).

6. The Bible, which was used as a guide in drafting the founding documents, also defines religion as duty. (James 1:26-27.)

> If any man among you seem to be religious, and bridalleth not his tongue, but deceiveth his own heart, this man's religion is vain. Pure religion and undefiled before God and the Father is this, to visit the fatherless and widows in their affliction, and to keep himself unspotted from the world.

of God. "The term religion has reference to one's views of his relations to his Creator, and the obligation they impose of reverence for his being and character, and of obedience to his will." *Davis v. Beason* 133 U.S. 333, 342 (1890).

Our history is replete with evidence proving beyond contradiction a belief in God consistent with the philosophy of government contained as a matter of law in our founding documents. In what has been mischaracterized as a case dealing with religion, the Supreme Court in *Holy Trinity Church v. United States*, 143 U.S. 457, 12 S. Ct. 511 (1892) actually gives a factual review of our philosophy of government reflected in the various state constitutions:[7]

> Illinois Constitution of 1870 contained the clause ". . . grateful to Almighty God. . . .;" Indiana Constitution of 1816 referenced the oath as being a ". . . . most solemn appeal to God.;" the Maryland Constitution of 1867 which provided that there was no test for the qualification to hold office ". . . . other then a declaration of the belief in the existence of God . . .;"Massachusetts Constitution of 1780: "it is the right as well as the duty of all men in society publicly, and at stated seasons, to worship the Supreme Being, the Great Creator and Preserver of the universe . . . as the happiness of the people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality . . .; "Mississippi

7. At that time all 44 states contained language which established the recognition of God in the preamble of their Constitution. Today, the 45 states that have preambles all recognize God to whom we owe allegiance.

> Constitution of 1832 stated "no person who denies the being of a God, or a future state of rewards and punishments, to hold any office in the civil department of this State. . . . ;" Delaware Constitution of 1776 concerning an oath of allegiance to hold office and expression who "faith in God the Father etc. . . ."

Justice Stewart in his dissent in *Engel v. Vitale*, 378 U.S. 421 (1962) sets out historical facts stating that since the days of Justice John Marshall "Our Crier has said 'God save the United States and this Honorable Court.'" He observed that from President George Washington to President John F. Kennedy each upon assuming office prayed for the protection and help of Almighty God. His footnotes recite the prayers of many of the Presidents starting with George Washington. Each prayer illustrated faith in a living God whom they believed would hear and answer, consistent with our *philosophy of government.* The prayer of President Washington is particularly insightful in light of its timing and content.

Justice Stewart also referred to the *Star Spangled Banner* which was made the National Anthem of the United States by act of Congress in 1931, contains stanzas which recite heaven and God, and closes with "and this be our motto, in God is our trust." In 1865 the words "in God we trust" were impressed on our coins.

In *Wallace v. Jeffrey*, 472 U.S. 38, 105 S. Ct. 2479 (1985), the dissent of Justice Rehnquist sets out an historically accurate recitation of facts dealing with the state of affairs when the first amendment was adopted. Those recited facts of history when read in the light of the Declaration and objectively analyzed, photograph the pillars supporting our philosophy of government as distinguished from religion.

In 1875 President Grant sought adoption of the Blaine Amendment. It contained the following proviso: "This article shall not be construed *to prohibit the reading of the Bible in any school or institution. . . .*"[8] (italics provided)

The Bible has always played a prominent part in the governmental history of this nation. It has been officially used in swearing in ceremonies of officials and judges even before it was used in swearing in President Washington. On September 12, 1782 for example, the full Congress approved the printing of the first English-language Bible ever printed in America. It contained an endorsement printed on the front of the Bible "Whereupon, resolved, that the United States in Congress assembled. . . . recommend this edition of the Bible to the inhabitants of the United States."[9] A recent article by Justice Ginsburg states: "The security I feel is shown by the command from Deuteronomy displayed in artworks, and Hebrew letters, on three walls and the table in my chambers."[10]

Up until 1963 the school children of this land had the opportunity to read the Bible in school, say the Lord's Prayer, and study the Ten Commandments. The obvious purpose of all of this was not to establish a religion, but to establish a standard of morals consistent with the philosophy of government of this nation.

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8. H. Res. 1, 44th Cong., 1st Session (1876).

9. Journals of . . . Congress (1914), Vol. XXXIII, The 574, September 12, 1782.

10. The Supreme Court Historical Society, Quarterly, Volume XXIV, Number 3, 2003, "From Benjamin to Breyer: Is There a Jewish Seat?"

The philosophy of government articulated in the Declaration was the result of carefully chosen words to express via a common denominator, a belief in God, His Law, and the foundation of a new government:

> . . . [To] assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitled them . . . We hold these Truths to be self-evident that all Man are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness — That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed . . . appealing to the Supreme Judge of the World. . . . with a firm reliance on the Protection Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.[11]

The document recognizes established laws which are referred to as "laws of nature" and "nature's God."[12]

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11. Of a common thread is the term "Law of Nations" Used in Article I § 8 of the Constitution, and "Oath or Affirmation" in Article VI; also "Year of Our Lord," in Article VII.

12. Blackstone's *Commentary on the Laws* introduced in 1766 was the key source of definitions:

> Man, considered as a creature, must necessarily be subject to the laws of his Creator for he is entirely a dependent being. This will of his Maker is called the Law of Nature . . . and is . . . coeval with mankind and dictated by God himself which [contains] the eternal immutable laws of good and evil. . . . and are to be found only in the Holy Scriptures . . . and no human law should be suffered to contradict these.

John Locke, another major source of definitions states: "The Law of Nature stands as an eternal rule to all men. . . . [and men's actions] must be conformable to the Law of Nature; i.e. to the Will of God." *Two Treaties*, Book II, Page 285, Chapter XI, § 135.

It affirms a truth that is "self-evident." God is *the* Creator and He *creates* all men equally with certain unalienable rights. Article I § 8 of the Federal Constitution incorporates the same use of terms, "law of nation's."

Thus it establishes a philosophy that God is a ruler and that His transcendent laws are to govern and be the guide for, and superior, to man's laws. That does not establish a religion, but the legal philosophy of government of these United States.

This philosophy of government is reflected in numerous ways in the Constitution, both in content and theory. "We the People" declare that the power to create government comes from the "consent of the governed." The Preamble also states that one of the purposes of the Constitution is to "secure the blessings of liberty to ourselves and our posterity." This statement affirms the concept of unalienable rights, given by the Creator. Article VII acknowledges the existence of the Creator, and as previously noted, incorporates the philosophy of government which is embodied in the Declaration.

The philosophy of government that acknowledges the Creator God is also reflected in amendments. For example, the fifth amendment protects "life, liberty, and property." This recognizes the importance of protecting unalienable Rights, and establishes that those Rights cannot be taken away unless appropriate legal steps are taken. This also affirms the truth that all people are created by God and therefore have great value. No one has the authority or right to take another person's life. This asserts the government's purpose to secure the unalienable right to life as stated in the Declaration of Independence. The 14th amendment, ratified July 9, 1868, which provided for due process and equal protection would be without meaning if there was not the philosophy of government that acknowledged the Creator. "All men are

created equal" is the bedrock foundation of due process and equal protection.

The Congressional record provides the following legislative history on the adoption of the 1954 amendment to the Pledge of Allegiance adding the words "under God:"[13]

> The sordid records of the divorce courts, of the juvenile delinquency case histories, the tragedy of broken homes, wondering families, of the cheap price put on human life, the old heads on young children, the disrespect for authority, the contempt for law, the chiseling among those in authority, the lack of honor among the citizenry-all of this is the shame of America, the open sores of her secularist spirit.[14] The children of our land, in the daily recitation of the pledge in school, will be daily impressed with a true understanding of our way of life and its origins.[15] At this moment of our history the principles underlying our American government and the American way of life are under attack by a system whose *philosophy is at direct odds with our own*. Our American government is founded on the concept of the individuality and the dignity of the human being. Underlying this concept is the belief that the human person is important because he was *created by God and endowed by Him with certain*

13. All emphasis has been added.

14. Cong. Rec. 18 (appendix), A 5920-A5921 (August 2, 1955) (articles submitted by Rep. Louis C. Rabut, sponsor of the House resolution to insert the words "under God" into the previously secular pledge.).

15. Representative Rabaut, H. R. Rep. No. 83-16 93, at 3 (1954), reprinted in 1954 U.S.C.C.A.N. 2339, 2341.

> *inalienable rights* which no civil authority may usurp. The inclusion of God in our pledge therefore would further acknowledge the dependence of our people and our government upon the moral directions of the Creator. At the same time it would serve to deny the atheistic and materialistic concepts of communism with its attendant subservience of the individual.[16] *This is not an act establishing a religion . . . a distinction must be made between the existence of a religion as an institution and the belief in the sovereignty of God.* The phrase "under God" recognizes only the guidance of God in our national affairs.[17] I have felt that the Pledge of Allegiance to the flag which stands for the United States of America should recognize the Creator who we really believe is in control of the destinies of this great Republic. It is true that under the Constitution no power is lodged anywhere to establish a religion. *This is not an attempt to establish a religion; it has nothing to do with anything of that kind.* It relates to belief in God, in whom we sincerely repose our trust. We know that America cannot be defended by guns, planes, and ships alone. Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God's providence over the lives of our people and over this great nation.[18]

(Emphasis added).

16. H.R. Rep. No. 83-1693, at 1-2 (1954), *reprinted in* 1954 U.S.C.C.A. 2339, 2340.

17. H.R. Rep. No. 83-1693, at 3 (1954), *reprinted in* 1954 U.S.C.C.A.N. 2339, 2341-42.

18. 100 Congressional Record 6348.

Modern illustrations affirm our philosophy of government. Franklin Delano Roosevelt during a radio broadcast in 1935 stated:[19]

> We cannot read the history of our rise and development as a nation, without reckoning with the place the Bible has occupied in shaping the advances of the Republic.

During World War II, Gideons International printed multitudes of New Testaments that were given to our troops as they left for the service. The prologue of this Bible was written by President Roosevelt and was short and to the point as to why these Bibles were given out.

> As Commander-in-chief, I take pleasure in commending the reading of the Bible to all who serve in the armed forces of the United States. Throughout the centuries men of many faiths and diverse origins have found in the Sacred Book words of wisdom, counsel, and inspiration. It is a fountain of strength and now, as always, an aid in attaining the highest aspirations of the human soul.

The concluding words of President Truman's first address to Congress were:

> At this moment I have in my heart a prayer. As I have assumed my heavy duties, I humbly pray to Almighty God in the words of King Solomon 'Give therefore Thy servant an understanding heart to judge Thy people that I may discern

19. The quotations of President Roosevelt and President Truman:http//www.zdraines.homestead.com/files/bookusa.htm (*One Nation under God; part eight-America at the Crossroads, summary*).

> between good and bad; or who is able to judge this Thy so great a people?' I ask only to be a good and faithful servant of my Lord and my people.

When questioned concerning the reasons for America's greatness following the world wars, President Truman said it was because of our legal systems:

> The fundamental basis of this nation's laws was given to Moses on the Mount. The fundamental basis of our Bill of Rights comes from the teachings we get from Exodus and St. Matthew, from Isaiah and St. Paul. I don't think we emphasize that enough these days. If we don't have a proper fundamental moral background, *we will finally end up with a totalitarian government which does not believe in rights for anybody except the State!* (Emphasis supplied).

John F. Kennedy in his inaugural address on January 20, 1961 said:[20]

> The rights of man come not from the generosity of the State but from the hand of God. The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it, and the glow from that fire can truly light the world. And so, my fellow Americans, ask not what your country can do for you, ask what you can do for your country.

20. The quotations of President Kennedy and President Reagan:http//www.zdraines.homestead.com/files/bookusa.htm (*One Nation under God; part eight-America at the Crossroads, summary*).

> Let us go forth to lead the land we love, asking His blessing and His help, but while here on Earth God's work will truly be our own.

Ronald Wilson Reagan was the 40th president of the United States. On October 4, 1982, upon the joint resolution of Congress, President Reagan declared 1983 the "year of the Bible". This resolution, Public Law 97-280, stated:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the president is authorized and requested to designate 1983 as a national 'Year of the Bible' in recognition of both the formative influence the Bible has been for our nation, and our national need to study and apply the teachings of the Holy Scriptures.

Further corroboration is a statement of Chief Justice of the United States Supreme Court, Earl Warren printed in *Time* magazine, February 15, 1954:

> I believe no one can read the history of our country without realizing that the Good Book and the Spirit of the Savior have from the beginning been our guiding genius. Whether we look to the first charter of Virginia or to the Charter of Massachusetts Bay, or to the fundamental orders of Connecticut, the same objective is present, a Christian land governed by Christian princ.ples. I believe the entire Bill of Rights came into being because of the knowledge our forefathers had of the Bible and their belief in it. I like to believe we are living today in the Spirit of the Christian religion. I like also to believe that as long as we do so, no great harm can come to our country.

At stake in this case then, is an effort to dismantle this nation's philosophy of government under the guise of "separation of church and state." Respondent would have this court falsify the truth regarding this nation's philosophy of government that presupposes the Creator, and by judicial fiat, change it to one of atheism.

If a law or legal decision is not based on a foundation of absolutes, it is arbitrary and tyrannical.[21] Consequently this nation's philosophy of government was not engrafted into the founding documents as a religion, but as a philosophy that the legislatures, executive branch, and the courts would utilize in governing this nation.

Failing to recognize and apply the philosophy of government as written, we fall prey to the very destructive consequences which our fathers warned would follow if that philosophy was at any time aborted.

V.

OUR PHILOSOPHY OF GOVERNMENT RECOGNIZES AN ETERNAL, TIMELESS GOD AS THE CREATOR AND IS BASED UPON CERTAIN ESTABLISHED PRINCIPLES

The barren and rocky shores of historical fact absent the beauty of spiritual dimension which was the gravamen of our philosophy of government as set out in the Declaration, lead only to the murky waters of divergent opinion. The words that declare our philosophy are not just political metaphors, they represent the reality of the deep spiritual convictions of the founders.

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21. The sheer pronouncement that it "protects" the "freedom" of the individual is insufficient. One does not have the freedom to ignore a stop sign.

The origin of this philosophy was drawn from God's Word, for example Psalm 90:2: "Before the mountains were brought forth, or ever thou hadst formed the earth and the world, even from everlasting to everlasting, thou art God."

It is extremely critical at this point that the essence of our philosophy of government, which proclaims the reality of the eternal, timeless Creator, is not to be confused with the vague and somewhat nebulous term religion. The brilliant dissent of Justice Douglas in deciphering Sunday closing laws as subtle disguised "religious coercion" in *McGowan v. State of Maryland*, 366 U.S. 20, 81 S. Ct. 1101, 1218 (1961) identified the difference between religion and our philosophy of government. He first asserted that the principles of the Declaration of Independence which proclaim the Creator are "enshrined" in the Constitution and the Bill of Rights. The term religion was then identified by how one performs his duty to God, as opposed to the recognition of God as set forth in the Declaration, stating ". . . *His service* will not be motivated by coercive measures of government. . . ." *Id.* at 563 (my emphasis). In his preciosity, he may have inadvertently strayed somewhat into the area of philosophy. But his opinion clearly isolated the fact that *the focus of religion is on service to God or not serving Him, not on recognition.* This is the heart of the matter. Our philosophy of government requires the recognition of God and his law. It does not dictate how or whether one is to serve God, and there is a vast gulf between the two.

The substance of our philosophy of government does not rest in the rhetoric alone but in the substantive principles of that rhetoric which results in *justice* based on *truth.* Recognition and application of these principles as guidelines

for government and its citizens were deemed vital by the founders for the survival of this nation.[22]

Consistent with God's nature, eternity was the foundational principle for this philosophy. The founders recognized that the entire concept of God and the Bible was premised on eternity and the future destiny of man. Government was established with that principle at the core. Life was not exhausted in our three score years and ten. Since we were created in the image of God, He had put the vision of eternity into our hearts. We were created for something beyond this mortal existence of a handful of years.[23] That realization was recognized in the oath which they took, their writings, speeches, Last Will and Testaments, etc.[24] They were not living simply for the "now." Looking forward, mindful of the reality of eternity, they were creating something for their posterity. Neither they nor their posterity were to lose sight of the syndetic fact of eternity and the

22. This discussion is not oblivious to the fact that there has been a tremendous change in the religious texture of this nation since 1776, nor that it is infused with various philosophies, beliefs, and cultures which have been brought in by an increasing stream of immigrants particularly since 1950. It likewise does not overlook the horrendous change in content of our educational system. That is why the recognition of our philosophy of government is so important in this case, and the constitutional means of changing that philosophy if it is deemed warranted, is by way of amendment.

23. They wanted to build that concept into their children, because it caused them to look to the future and built into their character stability, responsibility, respect, diligence, and honesty, character qualities necessary for building a nation. Their writings demonstrated they believed heaven was an unspoken yearning in the heart of every person.

24. For numerous quotations and the source of obtaining copies of Wills, etc. see Chapter 6, *Original Intent* by Barton, WallBuilders Press, 2000.

established philosophy of government that "It is appointed unto man once to die and after that the judgment,"[25] because it gave pause to their decisions. There is a foundational loss when society, particularly the youth, lose the concept of eternity. One's life is then operated pragmatically for the moment and as a result may believe and live for anything that produces pleasure.

The apperception of eternity gives birth to the second principle, morality. A quiver of absolute values, from which decisions will be made. When a brilliant mind is deprived of the teachings of the word of God, the result is relativism. The modernist says that those who are antiquated thinkers believe that truth can be propositionally stated. What? Was that a propositional statement that those making it believe conforms to fact or reality? The more one hammers at the law of non-contradiction the more the law of non-contradiction pulverizes them. There can be no fixed standard of morality without a foundation of absolutes. When the concept of eternity is lost, so is the concept of morality and with it the foundation for establishing the basis for universal moral decisions on which unity and peace is built.

The absolute standard for morality results in the principle of accountability. The records of the founders demonstrate the concept of accountability. Flowing from their philosophy of government they were ultimately accountable to a living God who they would face in judgment. When the principle of morality based upon absolutes is lost, there is the accompanying loss of accountability.[26]

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25. John Hart, a signer of the Declaration stated in his Will: "Thanks be given unto Almighty God therefore, and knowing that it is appointed for all men once to die and after that the judgment [Hebrews 9:27] (See Original Intent ibid., Chapter six P. 135).

26. The evidence of that fact is all about us in our society today.

Charity, the fourth element is born from the sense of accountability. With the loss of accountability there is the accompanying loss of charity. What survives in this area is unpredictable, and unreliable. The primary motivating drive is self-interest. This must have been in the mind of President Kennedy when he said: "Think not what your country can do for you, but what you can do for your country."

When young people in the educational system are deprived of these teachings, moral disaster stalks this nation. Decisions that affect their lives are made based on self-interest, and human reasoning, which, without a foundation is always flawed. Benefits from incorporating our philosophy of government into our daily life, as well as prophetic words of warning of dire consequences resulting from departing from that philosophy of government were stated over and over again by the founders.

John Quincy Adams stated that there were "three points of doctrine, the belief of which forms the foundation of all morality. The first is the existence of a God; the second is the immortality of the human soul; and the third is a future state of rewards and punishments. . .".[27]

VI.

ATHEISTIC PHILOSOPHY OF GOVERNMENT

Atheistic philosophy proclaims there is no God. Consequently there are no "unalienable rights", only "civil or political" rights which are granted by government and can be taken away. Life, liberty and property are not rights to be

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27. John Quincy Adams, *Letters of John Quincy Adams to His Son on the Bible and its Teachings* (Auburn: James M. Alden, 1850), pp. 22-23 (see also numerous quotations of the same ilk in Original Intent, Chapter 17; by Barton, WallBuilders Press, 2000 from which these quotes were taken as well as others in this brief)

protected by government, only terminable privileges. Without the existence of a Creator, morality, instead of having an absolute standard, becomes what man individually decides which tends to anarchy, or, as President Truman articulated, a totalitarian government "which does not believe in rights for anybody except the State."

Our founding fathers had the wisdom to see this and clearly articulated a philosophy of government which had its foundation in the Creator and His benevolent laws. Based on that philosophy the founders enshrined our freedom in the equal protection and due process provisions of our Constitution. America has become the idol of the world as a place to live and enjoy the fruits of freedom. It possesses a form of government which, because of its philosophy, permits the attack by respondent, and those of like mind, on the very philosophy that makes such an attack possible. The converse is the atheistic philosophy of government under which human rights, equal protection, and due process are nonexistent.

We do not need to be parviscient concerning applicable examples: China with its human rights violations; the recent Soviet Union with its slaughtered millions; Nazi Germany which was governed by this philosophy, which was responsible for drenching the world in blood.

Destroy the philosophy of government which recognizes God and His benevolent laws as a part of our public life, and you hazard every single one of the freedoms that we are talking about. It is not an issue of religion here; we are involved in the potential destruction of this nation's philosophy and its heritage which actually permits freedom of religion.

VII.

PREDICTED PRESENT AND FUTURE CONSEQUENCES

The essence of America's principles of right and wrong are founded in our philosophy of government, not upon the fluctuating feelings and emotions of people. As illustrated by the statements of the Presidents earlier quoted in this brief, and buttressed by innumerable statements of leaders past and present, we have been warned of the consequences that flow from deviating from our philosophy of government. Have we mistakenly departed from our stable philosophy of government under the guise of "separation of church and state?" Is there somehow a modern mindset that does not endorse the philosophy of government as established in our founding documents? After the enactment of the "Equal Access Bill of 1984" President Reagan said:[28]

> In 1962, the Supreme Court in the New York prayer case banned the saying of prayers. In 1963, the court banned the reading of the Bible in our public schools. From that point on, the courts pushed the meaning of the ruling ever outward, so that now our children are not allowed voluntary prayer. We even had to pass a law to allow student prayer groups the same access to school rooms after classes that a Young Marxist Society, for example, would already enjoy with no opposition. The 1962 decision opened the way to a flood of similar suits. Once religion had been made vulnerable, a series of assaults were made in one court after another, on one issue after another.

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28. President Reagan:http//www.zdraines.homestead.com/files/bookusa.htm (*One Nation under God; part eight-America at the Crossroads, summary*).

> Without God there is no virtue because there is no prompting of the conscience. Without God there is a coarsening of the society. Without God democracy will not and cannot long endure. If we ever forget that we are one nation under God, then we will be a nation gone forever.

Following is a truncated illustration of the "flood of similar suits" to which President Reagan referred: Students may not see the Ten Commandments since they might read, meditate upon, respect, or obey them. *Stone v. Graham*, 449 U.S. 39 (1980); *Ring v. Grand Forks Public School District*, 483 F. Supp. 272 (D.C. N.D. 1980); *Lanner v. Wimmer*, 662 F.2d 1349 (10th Cir. 1981); A school song was struck down because it promoted values such as honesty, truth, courage, and faith in the form of a "prayer." *Doe v. Aldine Independent School Dist.*, 563 F. Supp. 883 (U.S.D.C., Tx. 1982); a public cemetery may not have a planter in the shape of a cross. *Warsaw v. Tehachapi* CV F-90-404 EDP (U.S.D.C., E.D. Ca. 1990); A classroom library may not contain any books which deal with Christianity, or for a teacher to be seen with a personal copy of the Bible at school. *Roberts v. Madigan*, 702 F. Supp. 1505 (D.C. Col. 1989), 921 F.2d 1047 (10th Cir. 1990), *cert. denied*, 112 S. Ct. 3025, 120 L. Ed. 2d 896. A war memorial cannot be erected in the shape of a cross. *Lowe v. City of Eugene*, 451 P.2d. 117 (Sup. Ct. Or. 1969), *cert denied*, 434 U.S. 76. A child may not ask whose birthday is celebrated by Christmas. *Florey v. Sioux Falls School District*, 464 F. Supp. 911 (U.S.D.C., S.D. 1979), *cert. denied*, 449 U.S. 987 (1980). In a high school class in Dixon, Tennessee, students were required to write a research paper using at least four sources. When Britney Seattle wrote a paper on the life of Jesus Christ she was given a zero by the teacher, even though students were permitted to write about reincarnation, witchcraft, and the occult. *Britney Kay Seattle v. Dixon County School Board*, 53 F.3d 152 (6th Cir. 1995), *cert. denied*, 64 L.W. 3478 (1995).

The consequences of publicly aborting our philosophy of government are all about us. Between 1960 and 1999 the violent crime rate increased 226%; out of wedlock births increased 523%; out of wedlock teen births increased 430%; and teenage suicide increased 134% between 1962 and 1998.[29] There are articles galore of the tragic consequences of the mushrooming destruction of the family. Articles abound on the unquestioned disastrous consequences of divorce upon the family and children;[30] which include sickness and death;[31] suicide;[32] the psychological consequences of the broken home and the need for a father;[33] alcoholism and drugs;[34] crime;[35] educational achievement;[36] and the list goes on and on.[37]

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29. *The Index of Leading Cultural Indicators* 2001, http://www.empower.org/.

30. Divorce, Kirby Anderson: http://www.probe.org/docs/divorce.html.

31. Children of Divorce: Sickness and Death: http://www.divorcereform.org,/phys.html.

32. Children of Divorce: Sickness and Death: http://www.divorcereform.org,/phys.html.

33. Children Need Fathers Study Shows: http://patriot.net/~crouch/adr/kids.html.

34. *Fact Sheet on Divorce in Americas: why marriages matter*: http://www.smartmarriages.com/divorce_brief.html.

35. *Children of Divorce: Crime Statistics: http://www.divorcereform.org.html.*

36. *Children of Divorce: Educational Achievement*: http://www.divorcereform.org/edu.html.

37. The MSNBC Coverage reports: Atlanta, July 28-"The number of gay and bisexual men diagnosed with HIV . . . climbed for the third consecutive year in the United States in 2002, fueling fears that the disease might be policed for a major comeback in this

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The violence in the schools together with sexual promiscuity and disease is too well documented to reference. Our daily papers are increasingly filled with the torturous reports of moral pain and misery. Contrary to our philosophy of government, the filth of pornographic literature that is utilized in our public schools under the guise of "education,"[38] and the ability of school children to use whatever filthy language they deem appropriate, verbally or on clothing, is ruled protected under the guise of "freedom of speech."

The young people of this nation are not taught that we are created beings with equal rights as declared in our philosophy of government, but rather are educated under Darwin's philosophy of evolution with whom Karl Marx agreed saying: *"In our evolutionary concept of the universe, there is absolutely no room for either a Creator or a Ruler."*[39] (Emphasis added).

That a causal relationship exists between the increasing inability to recognize and proclaim our philosophy of government in our schools and public forum and the moral decay taking place in this nation is beyond a reasonable doubt.

As demonstrated forcefully from the evidence at the Nuremberg trial, Justice Jackson proved that under the atheistic

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high-risk group. A substantial number are under the age of 22. *Http://www.cdc.gov/hiv/stats.htm<http://www.cdc.gov/hiv/stats.htm>* (and others).

38. For example: *Changing Bodies: Growing Up, Sex & Sexual Health*: *It's Perfectly Normal:* Robie H. Harris, illustrated by Michael Emberly: the Press-Enterprise, Riverside, Cal. (www.Candlewick.com); *High School Oral Sex Article Stirs Controversy:* http://www.thedenverchannel.com/news/221-2986/detail.html.

39. Marx and Engles On religion, NY: Schocken 1964, page 295.

philosophy of government in Hitler's Nazi Germany, and in accord with Darwin's philosophy of evolution and Nietzsche's God is dead philosophy, every vestige of God and His moral law had been extracted from the educational system and public life. The result was the slaughter of over 6 million Jews in addition to Poles, Gypsies, and other dissidents to the Nazi régime. The trial record illustrates the tactics of an atheist form of government in obtaining control in a nation and the consequences.[40] Saddam Hussein is a recent illustration.

CONCLUSION

The great American experiment in government has been successful because of its people, its institutions, and its philosophy of government that acknowledges the existence of the Creator. Legal documents, presidential proclamations, and Supreme Court decisions affirm that truth. Congressional actions to memorialize the philosophy of government in this nation have been correct. The national motto, the national anthem, "in God we trust" on our coins, "under God" in the Pledge of Allegiance all remind us of our roots and commitment to a government that presupposes the Creator God, the source of unalienable rights and the one "who rules over the universe."

The government has the responsibility to recognize the existence of God and His law as our *philosophy of government*. It is in plain black and white, easily read in the Declaration. It can't be misread or misinterpreted. When the founding documents of this nation were drafted, they adopted as a matter of law the philosophy of government under which we live and which is memorialized in the phrase "in God we trust" on our coins,[41] and the words "under God" in our

40. Trial record of evidence and argument can be found on http://www.yale.edu/lawweb/avalon/imt/proc/11-21-45.htm.

41. The Latin phrase on a one dollar bill above the pyramid, ANNUIT COEPTIS, means "God has favored are undertaking."

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Pledge of Allegiance. Those terms do not express a religion but our dramatic *PHILOSOPHY OF GOVERNMENT.*

As President Eisenhower said, "In this way we are affirming the transcendence of religious faith in America's heritage and future; and in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource in peace and war."[42]

TO AFFIRM THE NINTH CIRCUIT DECISION WOULD BE TANTAMOUNT TO RULING THAT THE DECLARATION OF INDEPENDENCE IS UNCONSTITUTIONAL.

For the reasons stated in this brief, and perhaps for reasons far better stated by the members of this court, our *PHILOSOPHY OF GOVERNMENT* should be affirmed and the Ninth Circuit Court of Appeals reversed.

Respectfully submitted,

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The phrase under the pyramid NOVUS ORDO SECLORUM, "a new order has begun." At the base of the pyramid is the Roman numeral for 1776.

42. <http://usguvinfo.about.com/cs/usconstitution/a/pledgehist>.htm.